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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO. 2120 OF 2006

PETITIONER : **M/S MAHESHWARI RESORT AND HEALTH CLUB PRIVATE LIMITED**
Village: Katulbod-Bhilai
Tah & Distt. Durg (C.G.).
Through :- Director of the Company Shashikant M. Damani, aged about 47 years, S/o Shri Maganlai Damani, R/o 11/2, Nehru Nagar, (West) Bhilai Tahsil & Distt. Durg (C.G.)

Versus

RESPONDENTS:

1. **UNION OF INDIA,**
Through: The Secretary,
Minsitry of Surface & Transport
Government of India
Parivahan Bhawan, 1-Parliament Street
NEW-DELHI

2. **NATIONAL HIGH WAY AUTHROITY OF INDIA**
THROUGH :- Chairman
National High Way Authority of India
1-Eastern Avenue, Maharani – Bag
NEW DELHI

3. **STATE OF CHHATTISGARH**
THROUGH : Secretary,
Housing & environment
Mantralaya, D.K.S. Bhawan, G.E. Road, Raipur (C.G.)

4. **CHHATTISGARH INDUSTRIAL DEVELOPMENT CORPORTATION** (Finance Cell)
Through :- Deputy General Manager Pandit Deen Dayal Upadhyay Nagar, Sector -4, Ring Road No.1, Raipur (C.G.).

5. **SHAKTI KUMAR M. SANCHETI**

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LIMITED 267-Ganesh Phadnavis Bhawan, Nagpur-440 010 (Maharashtra) Through:- Director Shri Anand Sancheti, Shakti Kumar M. Sancheti Limited 267- Ganesh Phadnavis Bhawan Tringular Park, Dharapeth, Nagpur-440 010 (Maharashtra)

6. **SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA** Nariman Bhawan Nariman Point **MUMBAI – 400021** (Maharashtra) Through :- General Manager

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Present : Shri V.G. Tamaskar, learned counsel for the petitioner.
Shri S.K. Beriwal, learned Standing Counsel for Union of india/respondents No.1.
Shri Yashwant Singh, learned G.A. for the State.

(ORAL ORDER)
(Passed on 25th April, 2006)

Although the writ petition runs into 41 typed pages, the crux of the grievance of the petitioner is that on account of the action of the National Highway Authority in constructing Durg bypass road, the petitioner has sustained extensive damage to its property and its income has been reduced drastically, inasmuch as the approach road to the petitioner-Company is blocked. In the premise of the above allegations, the petitioner self-assessing the damage in a sum of Rs.2,93,40,082.86, has sought for a direction to the respondents 1, 2, 3 and 5 to pay the above sum as damage. In addition, the petitioner has sought for a direction to the respondents to clear the blockage caused on account of the construction of bypass road. I am of the considered opinion that the dispute brought before the Court is eminently fit one to be thrashed out by the petitioner by resorting to private law review remedies like declaration, injunction and damages to suit his

grievance. It is needless to state that in order to grant relief, the Court has to adjudicate upon the facts, decide in the first instance whether the action of the respondents in constructing Durg bypass road has violated any of the legal rights / easementary rights of the petitioner and if so, what is the damage sustained by the petitioner-Company on account of the construction of the bypass road resulting in the alleged blockage of the approach road to the petitioner-Resort. Such a dispute cannot be resolved only on the basis of the affidavits and counter affidavits, in a summary proceeding under Article 226 of the Constitution. In that view of the matter, I decline to entertain this writ petition. The writ petition is accordingly dismissed, leaving open all the contentions raised in this writ petition to be agitated before the Civil Court in the event of the petitioner-Company choosing to institute a suit in the Civil Court, as indicated above. No costs.

Sd/-
Chief Justice

Subba